



**FOLEY
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TTAB

July 20, 2007

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Digress Ventures, LLC v. Christian Belce-Kennedy
Cancellation No: 92-045,951
Registration No: 2,569,622
Our File No: 26288-2

Sir:

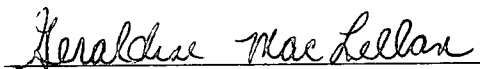
We enclose herewith the following document(s) for filing:

**{X} PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION FOR
RELIEF FROM JUDGMENT**

If any fees are required, please charge Deposit Order Account No. 06-1446. A duplicate of this letter is enclosed.

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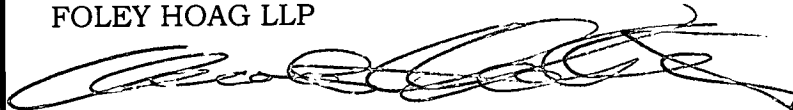
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Geraldine MacLellan

Dated: July 20, 2007

Respectfully submitted,

FOLEY HOAG LLP



Charles E. Weinstein
Attorney for Petitioner



07-25-2007

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Digress Ventures, LLC,)	
)	
Petitioner,)	
)	Cancellation No. 92045951
)	vs.
v.)	Registration No. 2,569,622
)	
Christian Belce-Kennedy,)	
Respondent.)	

**PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION
FOR RELIEF FROM JUDGMENT**

Petitioner, Digress Ventures, LLC ("Petitioner"), hereby opposes Respondent's Motion for Relief from Judgment.

Although Petitioner refers above to "Respondent's Motion," the Motion actually seems to have been filed by Respondent's former attorney without Respondent's knowledge or authorization. As such, it is improper and non-justiciable. Even if deemed justiciable, the Motion fails to establish *any* basis for relief. Moreover, granting the Motion would significantly prejudice Petitioner.

FACTS

Procedural Background

On June 20, 2006, Petitioner filed its petition for cancellation herein against Respondent's registration of LE SWICH for "sandwiches and chocolates," Reg. No. 2,569,622. The petition requested cancellation on the ground of abandonment, since Respondent had either not used the mark in the U.S., or had discontinued such use with no intention to resume same. Petitioner based its standing upon its pending application to register SWICH PRESSED

SANDWICHES for "ready-to-eat" sandwiches for consumption on or off the premises," Serial No. 78/767346. Petitioner's application had been rejected due to Respondent's registration.

On June 21, 2006, the Board mailed a copy of the petition for cancellation to Respondent, together with its order instituting the cancellation proceeding (the "institution order"). The Board's mailing was not returned as undeliverable.

Respondent failed to answer the petition for cancellation. Accordingly, on August 23, 2006, the Board mailed a notice of default. The Board's mailing was not returned as undeliverable.

Respondent did not reply to the notice of default. Accordingly, on December 20, 2006, the Board mailed a notice of default judgment, presumably to Respondent. The Board's mailing was not returned as undeliverable.

According to the record, the Board also mailed the notice of default judgment to Donald L. Dennison, the attorney who prosecuted Respondent's application during the years 2000-2002. This copy was returned as undeliverable, since Mr. Dennison had changed his address nearly three years earlier, but had not updated his address in the registration records.¹

Respondent did not reply to the notice of default judgment. Accordingly, on January 30, 2007, the Commissioner mailed an order canceling the registration. The Commissioner's order was not returned as undeliverable.

¹ The Board mailed the December 20, 2006 notice of default judgment to Mr. Dennison's address as listed in Respondent's registration: namely, 612 Crystal Square 4, 1745 Jefferson Davis Highway, Arlington, VA. However, Mr. Dennison had moved from this address to his current address on or before February 11, 2004, the date on which he filed a notice of the address-change in an unrelated Office matter. Attorneys have been able to change their addresses in registration records since at least as early as February 28, 2002, the date on which the online form for filing such changes became available.

Petitioner's Reliance on Respondent's Default

On December 7, 2006, Petitioner opened a restaurant in New York City under the mark SWICH PRESSED SANDWICHES. Petitioner deliberately postponed this opening until it was assured that Respondent had not replied to the institution order and the notice of default.

During the 7-8 months which have elapsed since the opening of its store, Petitioner has invested considerable time and money in promoting the mark SWICH PRESSED SANDWICHES, as established by the attached *Declaration of John Gargiulo* with its accompanying Exhibits. Among other things, Petitioner has paid for signs and interior wall decorations displaying the mark, the manufacture of employee uniforms bearing the mark, the printing of numerous take-out and catering menus featuring the mark, the creation of a website (www.swichpressed.com) promoting the mark, and the production of other promotional materials featuring the mark, including three 90-minute DVDs that play continuously on flat-screen televisions located at the restaurant.

Petitioner's SWICH PRESSED SANDWICHES restaurant has also received extensive media publicity, including favorable reviews and articles in publications such as *The New York Times*, *New York Magazine*, *The New York Daily News*, *Specialty Food Magazine* and others, all as shown in the attached Declaration. The media coverage, word-of-mouth and Petitioner's continuing promotional efforts have created a valuable good will in the SWICH PRESSED SANDWICHES mark.

Petitioner filed a new application to register the logo version of its mark SWICH PRESSED SANDWICHES (AND DESIGN), Serial No. 77/093480, on January 29, 2007, after Respondent's registration had been cancelled. Both this application and Petitioner's original application, Serial No. 78/767346, have been approved and published. Petitioner has incurred significant legal expenses in prosecuting both of these applications.

The Instant Motion

On May 30, 2007, Donald L. Dennison mailed a letter to the Board asking that the cancellation be set aside, and that the cancellation proceedings be reactivated. On June 20, 2007, the Board mailed an order stating that Mr. Dennison's letter would be treated as a Motion for Relief from Judgment.

In his Motion, Mr. Dennison claims authority to request such relief by virtue of the power of attorney in Respondent's original application, Serial No. 76/154814. That power of attorney is dated March 10, 2000. It authorized Mr. Dennison "to prosecute this application for registration with full power of substitution and revocation, to transact all business in the Patent and Trademark Office connected therewith and to receive the Certificate of Registration."

In support of his request for relief, Mr. Dennison states that the first page of the Board's institution order listed Respondent's correct street address, but did not list Respondent's country. On this basis, Mr. Dennison seems to imply that Respondent did not receive the institution order. However, he does not expressly make such a claim. Mr. Dennison does not make any claims, express or implied, regarding Respondent's receipt of the three subsequent notices, namely the notice of default, the notice of default judgment and the order of cancellation.

Mr. Dennison also offers his unsupported "opinion" that the institution order should have been mailed to him. Mr. Dennison has apparently not reviewed the record of these proceedings, and is therefore unaware that the Board did mail the notice of default judgment to him, but that the mailing was returned because he had failed to update his address years earlier.

ARGUMENT

I. Mr. Dennison's Motion Appears to be Unauthorized and is therefore Non-Justiciable.

Mr. Dennison does not claim that Respondent failed to receive the Board's institution order. Instead, he notes that the first page of the institution order did not list Respondent's country. On this basis, he seemingly implies non-receipt without expressly claiming it.

Clearly, Mr. Dennison has not determined whether Respondent received the institution order or not. In other words, Mr. Dennison has not spoken to Respondent about this matter, or about the instant Motion.

This conclusion is supported by Mr. Dennison's attempt to base his authority for filing the Motion on the seven year-old power of attorney in Respondent's original application. However, that power of attorney only authorized Mr. Dennison to prosecute the application, to transact Office business in connection with the application, and to receive the certificate of registration. It did not and does not authorize him to represent Respondent in an inter partes proceeding instituted years after the registration issued. See *Trademark Trial and Appeal Board Manual of Procedure (TBMP)* §310.0 at p. 300-163: "Typically, a power of attorney in an application appoints the named attorney 'to prosecute this application to register, to transact all business in the Patent and Trademark Office in connection therewith, and to receive the certificate of registration.' *That is, the power extends only up to the issuance and receipt of a registration*" (emphasis added).

Mr. Dennison's effort to ground his authority on an inapplicable and expired power of attorney, together with his failure to state or transmit an express claim of non-receipt by Respondent, strongly suggest that his Motion was filed on his own initiative, on the basis of his own inferences, without Respondent's knowledge or authorization. As such, the Motion is improper and non-justiciable.

II. The Motion Fails to Provide Any Grounds for Relief from Judgment.

The standard for setting aside a default judgment is established by Fed.R.Civ.P.60(b). The standard is a strict one. As noted in *TBMP* § 312.03, "The stricter standard reflects public policy favoring finality of judgments and termination of litigation."

In this case, the only possible basis for setting aside the default judgment would be the Board's supposed failure to notify Respondent of the cancellation proceeding. However (and remarkably), the Motion does not expressly claim that Respondent failed to receive the Board's institution order, and it says nothing whatsoever about Respondent's receipt of the three subsequent notices.

A. The Motion Does Not Expressly Claim that Respondent Failed to Receive the Board's Institution Order, and there is No Evidence to Rebut the Presumption of Receipt.

The Board has held that when a respondent's copy of an institution order is not returned as undeliverable, it is presumed to have been received by the respondent. *Jack Lenor Larsen Inc. vs. Chas. O. Larson Co.*, 44 USPQ2nd 1950 (TTAB 1997). Respondent herein has offered nothing to rebut this presumption.

Specifically, Respondent has not claimed failure to receive the Board's institution order. Respondent has not made such a claim either directly, by means of a sworn statement, or through an express statement by Mr. Dennison. In his Motion, Mr. Dennison seems to imply non-receipt. An implication is not sufficient.

Mr. Dennison's more specific allegations do not support his implied conclusion. The fact that the first page of the institution order did not list Respondent's country does not prove that the mailing envelope was equally deficient, or that the envelope failed to reach Respondent. As noted, that envelope was not returned as undeliverable.

Having failed to prove or even to claim non-receipt, Mr. Dennison has failed to rebut the presumption of receipt and has provided no grounds for reopening the cancellation proceedings.

B. The Motion Does Not Claim or Even Imply that Respondent Failed to Receive the Three Subsequent Notices in the Cancellation Proceedings, and there is No Evidence to Rebut the Presumption of Receipt

The Board's institution order herein was followed by three subsequent notices mailed over a period of six months: namely, the notice of default, the notice of default judgment, and the order of cancellation. Any one of these notices was sufficient to inform Respondent of the cancellation proceeding. The record does not show that any of these mailings to Respondent was returned as undeliverable.

Mr. Dennison makes no claim, expressed or implied, that Respondent failed to receive these subsequent notices. In fact, he says nothing about them. His failure even to address these issues constitutes a failure to provide sufficient grounds for setting aside the judgment herein.

In any case, even a direct denial of receipt by Respondent would be insufficient to rebut the presumption of same. In *Jack Lenor Larsen, Inc. vs. Chas. O. Larson Co.*, *supra*, the respondent submitted a declaration denying receipt of all four orders issued in a cancellation proceeding, namely the institution order, the notice of default, the notice of default judgment and the order of cancellation. The Board held that the respondent's denial was not enough to overcome the presumption of delivery. Observing that it would be "a great leap" to conclude that all four orders had not been mailed or delivered, the Board held that "We require more than the declaration of counsel's president to prompt us to make such a leap." *Id.* at 1954.

C. The Motion's Further Claims Are Unsupported and Do Not Provide Grounds for Revoking the Cancellation.

In his Motion, Mr. Dennison claims that the Board should have served him rather than Respondent. Mr. Dennison cites no authority in support of this proposition. Even if one accepts the claim, the record shows that the Board did mail the notice of default judgment to Mr. Dennison. The notice was returned as undeliverable because Mr. Dennison had failed to update

his address in the registration records, even though that address had changed nearly three years earlier.

Attorneys have been able to change their addresses in registration records since at least as early as February 28, 2002. Indeed, they are responsible for doing so. *TBMP* § 117.07 clearly states that "Changes of attorney addresses or powers of attorney in registration files are accepted by the Office when submitted with post-registration filings...as well as in a cancellation or concurrent use proceeding before the Board. *The attorney representing the Registrant is responsible for insuring that Registrant's correspondence address is updated*" (emphasis added).²

The burden of these provisions is clear: an attorney is responsible for updating correspondence addresses in the records of registrations as well as of inter partes proceedings. The attorney's failure to fulfill this responsibility may lead to the entry of a default judgment.

To the extent that Mr. Dennison believed himself responsible for Respondent's registration, he was also responsible for notifying the Office of his new correspondence address. Having failed to do so, Mr. Dennison is himself responsible for his failure to receive notice of the cancellation proceedings. Under these circumstances, it would be inequitable to grant relief from judgment, particularly in view of the prejudice that would result to Petitioner.

² See also *TBMP* Section 117.07: "If a party to a Board proceeding or its attorney or other authorized representative moves, a separate written notice of the change of address should be filed with the board and should reference the proceeding number. It is the responsibility of a party to a proceeding before the Board to insure that the Board has the party's current correspondence address. If a party fails to notify the Board of a change of address, with the result that the Board is unable to serve correspondence on the party, default judgment may be entered against the party."

III. Petitioner would be Substantially Prejudiced by the Reopening of the Cancellation Proceedings.

Among the factors to be considered in determining a motion to vacate a default judgment is whether the plaintiff will be prejudiced by same. *TBMP §312.03*. Such prejudice would clearly result here.

Petitioner opened its restaurant in New York City under the mark SWITCH PRESS SANDWICHES in December 2006, after Respondent had failed to reply to the Board's institution order and its notice of default. At this point, some 7-8 months later, Petitioner has spent a good deal of time and money in promoting the mark. Thanks to Petitioner's efforts, the mark has received extensive and favorable press coverage, and has acquired a valuable goodwill, Petitioner has also successfully prosecuted two applications to register its mark in word and logo formats.

Petitioner has taken all the above actions in reliance upon Respondent's failure to reply to the notices and orders issued in the instant proceedings. The reopening of those proceedings would jeopardize the validity of Petitioner's marks and their attendant goodwill, the successful applications filed by Petitioner and the money invested by Petitioner in prosecuting those applications and creating that good will, all to its substantial prejudice.

CONCLUSION

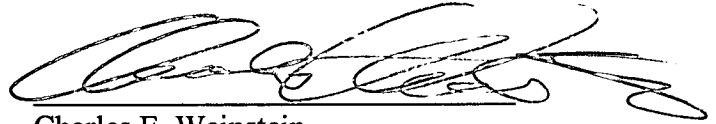
For the foregoing reasons, Petitioner submits that Mr. Dennison's Motion is unauthorized, improper and non-justiciable; or if justiciable, that the Motion has failed to prove (or even claim) that Respondent did not receive the many notices herein. Petitioner further submits that Mr. Dennison is himself responsible for his failure to receive notice of the cancellation proceedings. Finally, Petitioner submits that the equities do not justify setting aside the judgment herein. Petitioner has invested a good deal of time and money in using, promoting and obtaining imminent registration of its marks, and would be significantly prejudiced if the

cancellation proceedings were now reopened. Petitioner respectfully submits that the facts, the law, the equities and "the public policy favoring finality of judgments and termination of litigation" counsel that the Motion for Relief from Judgment be denied.

Respectfully submitted,

Date:

July 20, 2007



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Attorneys for Applicant

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Digress Ventures, LLC,)	
)	
Petitioner,)	
)	Cancellation No. 92045951
v.)	vs.
)	Registration No. 2,569,622
Christian Belce-Kennedy,)	
Respondent.)	

DECLARATION OF JOHN GARGIULO

I, John Gargiulo, hereby declare as follows:

1. I am the President of Digress Ventures, LLC, the Petitioner in the instant cancellation proceeding. Digress Ventures is the owner of the mark SWICH PRESSED SANDWICHES, the pending applications to register that mark in word and logo formats, Serial Nos. 78/767346 and 77/093480, and the New York City restaurant that operates under that mark.

2. The SWICH PRESSED SANDWICHES restaurant opened to the public on December 7, 2006. Digress Ventures deliberately postponed this opening until it was assured that the Respondent in the instant cancellation proceedings had not replied to the petition for cancellation and the subsequent notice of default.

3. During the 7-8 months which have elapsed since the opening of its restaurant, Digress Ventures has invested considerable time and money in promoting the mark SWICH PRESSED SANDWICHES, as shown by the attached Exhibits. Among other things, Digress Ventures has paid for signs and interior wall decorations displaying the mark, the manufacture of employee uniforms bearing the mark, the printing of take-out and catering menus featuring the

mark, the creation of a website promoting the mark (www.swichpressed.com), and the production of other promotional materials featuring the mark, including three 90-minute DVDs that play continuously on flat-screen televisions located at the restaurant.

4. The SWICH PRESSED SANDWICHES restaurant has received extensive media publicity, as shown in the attached Exhibits. The publicity has included favorable reviews and articles in *The New York Times*, *New York Magazine*, *The New York Daily News*, *Specialty Food Magazine* and other publications.

5. The media coverage, the resulting word-of-mouth and Digress Ventures' continuing promotional efforts have built up a valuable goodwill in the mark SWICH PRESSED SANDWICHES.

6. Digress Ventures filed its application to register the logo version of its mark, SWICH PRESSED SANDWICHES (AND DESIGN), on January 29, 2007, after the order of cancellation was issued in the instant proceedings. Both this logo application and Digress Ventures' original word application have been approved and published. Digress Ventures has incurred significant legal expenses in connection with both applications, including the expenses of prosecuting the instant cancellation proceedings.

7. At this point, reopening the cancellation proceedings would jeopardize Digress Ventures' applications to register its marks, the marks themselves with their attendant goodwill, and the expenses incurred in prosecuting those applications and creating that goodwill.

Having been duly warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the aforementioned applications or any resulting registrations, I further declare that I am authorized to execute this Declaration; that the facts set

forth in this Declaration are true; that all statements made of my own knowledge are true; and that all statements made on information or belief are believed to be true.

Date: 07/20/07

Respectfully submitted,

John Gargiulo

John Gargiulo
President, Digress Ventures LLC

EXHIBIT 1

Digress Ventures, LLC v. Christian Belce-Kennedy
Cancellation No: 92045951

Produced by: Digress Ventures, LLC

New York Magazine Restaurants

Grub Street

Edited by Josh Ozersky with Daniel Maurer

grubstreet@nymag.com

12/ 6/06

Swich On: New Shop Suggests Eventual Empire

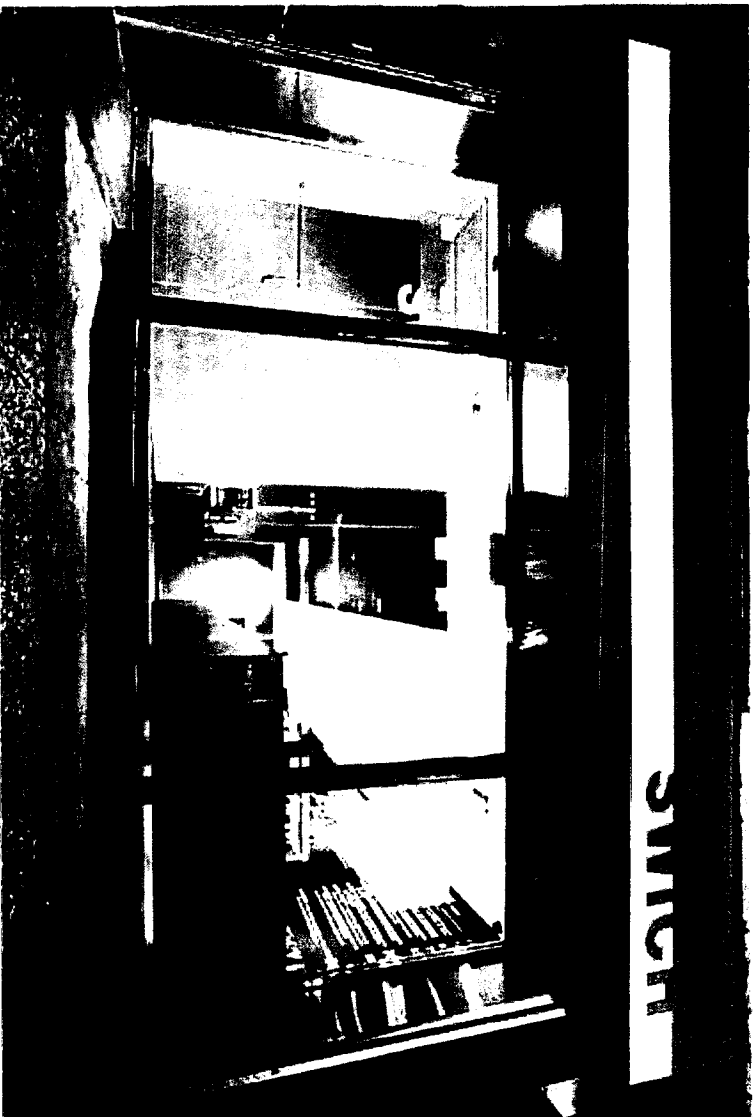


Photo so nice, we used it twice. Photo courtesy Swich

We visited the new pressed-sandwich emporium Swich last night, as promised, and owner John Gargiulo walked us through the menu that we advised him on to these many months ago. Gargiulo kept his own counsel: His dozen or so sandwiches don't closely resemble any of the city classics we told him we love. The best one, a simple number composed of Joe's Dairy mozzarella, proscuitto di Parma, and ripe beefsteak tomatoes, was extraordinary; the lesser items were good, too. Owing to the restaurant's intense planning and design, nicely executed details abound, from the intensely crisp and salty fresh potato chips to the TV screen showing original Dada-style videos behind the counter and what is definitely the most powerful automatic hand-dryer in the universe. The fast-foodie shop is so well thought-out that we're guessing it's the pilot for a national franchise. But you can judge for yourself, starting tomorrow.

Swich, 104 Eighth Ave., nr. 15th St.; 212-488-4800.

EXHIBIT 2

Digress Ventures, LLC v. Christian Belce-Kennedy
Cancellation No: 92045951

Produced by: Digress Ventures, LLC

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HOT OFF THE PRESS

John Gargiulo, who comes from the world of advertising and branding, is now switching from selling jingles for food to serving it. He opens his first restaurant venture, called Switch, in Chelsea this fall with the courageous goal of offering the best pressed sandwich in New York. But he may have learned a thing or two in his former occupation—like, no pressed sandwich should come without a hot interior in which to eat it. The space was created by the design firm The Apartment, with a chic but low-key aesthetic and a rocking sound and video system. Gargiulo envisions the café as a daytime and late-night neighborhood meeting place. But whatever time it is, the resto



V47, ON NEWSSTANDS NOW >

MOD DESIGN



DESIGN:
LENNON'S LAIR

will offer a radical new idea in the art of the urban sandwich—making it on the spot, not brought in from some truck with Magic-Marker faux grill marks drawn all over it. Gargiulo also may incur the wrath of Italians everywhere—he's making his panini-esque treats in Greek, Chinese, and American variations. How could you, John? I mean really. **Matthew Hall**

Visual rendering courtesy The Apartment

Swich opens this fall at 104 Eighth Avenue, NYC

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Rock progeny Sean Lennon shares a look at his West Village apartment



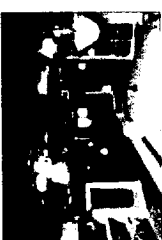
BEHIND THE WINDOWS

V goes backstage at Bergdorf Goodman, where no two holiday windows are ever the same



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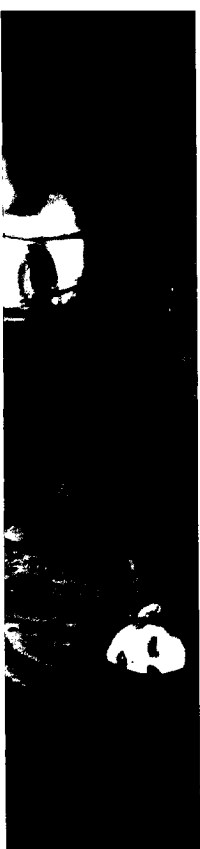


EXHIBIT 3

Digress Ventures, LLC v. Christian Belce-Kennedy
Cancellation No: 92045951

Produced by: Digress Ventures, LLC

A Switchover to Sandwiches

As career changes go, moving from creating ads for Quiznos Subs to opening a sandwich place is not so surprising. It's what John Gargiulo has done, opening Switch, 104 Eighth Avenue (5th Street).

The bright, Kelly green-trimmed storefront with tables has 14 panini presses, lined up at attention to receive various comprised sandwiches and heat them in about five minutes. The Trojan Horse, with ground lamb, tomato, yogurt sauce and

mint, and the tuna, with marinated artichokes and olive tapenade, are two winners. (But you will find a superior Cuban sandwich a few blocks north at Havana-Chelsea Luncheonette, 190 Eighth Avenue at 20th Street.)

The sandwiches (\$5.95 to \$8.95) are often assembled in advance but custom combinations can also be ordered. Some of the sandwich ingredients are also sold as salads: (212) 488-4800.



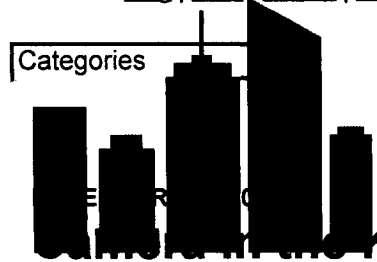
Photo: Robert F. Brown, The New York Times

EXHIBIT 4

Digress Ventures, LLC v. Christian Belce-Kennedy
Cancellation No: 92045951

Produced by: Digress Ventures, LLC

Features: [Blog](#) | [Polls](#) | [Videos](#) | [Newsmap](#) | [Contribute](#) | [Favorites](#) | [Forum](#)



Camera in the Kitchen: Switch

gothamist™





Before you bite into one of the signature hot-pressed sandwiches invented by first-time restaurateur John Gargiulo, you will notice the vibrant green interior, employees in design-savvy uniforms, and a custom-designed heimlich maneuver sign hanging in Swich, his new 8th Avenue eatery. With a logo, menu, interior, and uniforms designed by Soho-based design firm, The Apartment, Gargiulo, who comes from a background in advertising, knows a new sandwich needs to do more than just taste good--it has to *look good* too.

The product is the restaurant's namesake--the swich, a hot pressed sandwich in over a dozen taste-tested varieties from "memphis," a grown-up peanut butter, banana, and honey concoction pressed on semolina raisin bread to the "trojan horse," a cousin to the Greek gyro, a hearty serving of marinated ground lamb with tomato, tzatziki, and fresh mint on rosemary focaccia. The "earthy mcgee" pairs creamy goat cheese with fresh thyme and grilled portobellas for a delightfully smoky and rich sandwich on seven-grain bread and the "karate chicken" melds east-west flavors coupling roasted chicken, almonds, crispy wontons and homemade plum dressing on toasty french bread for sweet-and-savory satisfaction.



Both vegetarian and meat-filled options abound, as well as a half-dozen salads, specialty sweet potato and regular potato chips—which we wished were cut a little thicker. Swich also offers an perfectly tart homemade banana lemonade that we could drink all day, every day. Sandwiches are packaged in insulated foil and sealed with a sticker containing eco-conscious messages. One sticker titled "uncle (farmer) bill" reads: "Have any friends/relatives who run a farm? We'd love to talk to them. We're always looking for the freshest local ingredients. Email us their contact info at SwichPressed.com." In the tradition of local products all of Swich's bread is freshly baked at [Amy's Bread](#), which has shops in Chelsea Market and on Bleecker Street (at Leroy). Swich's conscienciousness also extends to their clearly marked recycling containers and to-go bags are made of paper, not plastic -- green touches in line with their decor.

The sandwich is age-old and time-tested, but even though just a few weeks old, John Gargiulo's hot-pressed treats add an aesthetically pleasing and toasty twist that is sure to please all palates. Gothamist is a fan and thinks you will be too.

Stop by [Swich](#), located at 104 8th Avenue (between 15th & 16th), 212.488.4800

Posted by [youngna park](#) in [Restaurants](#) | [Link](#) | [Comments \(7\)](#) | [Recommend this! \(7\)](#) | [\[+\]](#)

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COMMENTS (7) [HIDE GUEST COMMENTS]

this is very interesting, i am going to write an article about this right now...

i thinks its amazing how many people go somewhere because of design over quality..

readon

[1] Posted by: RD | [December 30, 2006 4:30 PM](#)

I thought the food was great here. Trojan horse is solid for sure. The owner is a super nice guy who was happy to hear comments and suggestions. Highly recommend checking it out.

[2] Posted by: matt | [December 30, 2006 8:10 PM](#)

whoa. a positive sandwich place review that's not shake shack? Gothamist are such whores.

[3] Posted by: kil | [December 30, 2006 8:23 PM](#)

I've eaten there several times now and the sandwiches are really good. What's more, the proportions are just right; the sandwiches are over-the-top huge like you get at most places. The cranberry cous-cous side dish is excellent.

[4] Posted by: Benny | [December 30, 2006 9:18 PM](#)

Agreed. I felt robbed after stopping at this place. Over 10 bucks for a skinny little sandwich of chicken mix between two pieces of toast and an iced coffee. I was hungry again about an hour later. Why do some places think they can charge out the ass just because the place looks cool. They play crappy music too.

[5] Posted by: disappointing | [December 30, 2006 9:56 PM](#)

sandwich = \$5

SWICH = \$10

I'm a genius!

[6] Posted by: marketing guru | [December 31, 2006 12:03 AM](#)

I must go here 4 times a week. Buffalo Hot Pants is my favorite. And the sandwiches are plenty big. Don't know what some of these peeps are talking about. If you want a giant \$5 sandwich that tastes like cardboard- go to Subway!

[7] Posted by: Jackson | [January 8, 2007 7:21 PM](#)

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EXHIBIT 5

Digress Ventures, LLC v. Christian Belce-Kennedy
Cancellation No: 92045951

Produced by: Digress Ventures, LLC



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Swich

104 8th Ave., btwn. 15th & 16th Sts.

(212)488-4800

Hours: 7 days a week, 11AM- 11PM (soon to keep hours until 2AM).

The newest player in the lunch arena, Swich, short for sandwiches, attempts to put itself on the map with pressed sandwiches. This modern, lunch cafeteria is sparsely outfitted with wood floors, a white communal table, and bright green & mirrored walls. Though sleek in that futuristic, Pinkberry sense of the word, Swich manages to evoke a warm vibe. Perhaps that's due to the contagious excitement of owner, John Garguilo, who personally welcomes customers into the space. Swich even encourages its customers to linger over a cup of damn good, Le Colombe coffee (Le Colombe) and a hip, ipod playlist. But dedicated to the almighty sandwich, John has crafted fresh and creative combinations with cutesy names, all served on fresh breads from Amy's Bread & Pain D'Avignon: the *Trojan Horse* with ground lamb, tzatziki and mint; the *Sidney* with ham, white cheddar, and apples; and *Thanksgiving Every Day* with turkey & stuffing served on cranberry walnut bread.

I started with the *Memphis*; peanut butter with banana & honey on semolina bread. Grab a napkin before you attempt a bite of this warm comfort food-concoction, served with a glass of whole milk. The crunch of tasty, raisin-studded semolina perfectly offsets the silky gooey-



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ness of the peanut butter. I made a go at the *Steak Monster*, sliced steak accompanied by caramelized onions, tomato and smothered in steak sauce. While they laid the steak sauce on a little thick and the steak should've been sliced into smaller peices, the meat was surprisingly juicy and tender.

I also dabbled in a deconstructed *Hippie Chick*, which simply put, is just chicken and avocado on watercress sans the bread. Though dainty and fresh, salads aren't Swich's strong suit: it left me wondering how much better the ingredients would've tasted sandwiched between two warm slices of "impossible wheat" bread. Impossible wheat, a "white wheat" with all of the fiber and nutrition of traditional wheat bread, apparently lacks the bitter aftertaste often associated with wheat bread. While "white wheat" is having its day in England, it has yet to make an impression on the American palate. Swich teamed up with Amy Scherber, of Amy's Bread fame, to introduce it to a NYC lunch crowd. I threw my *Bob Cobb*, John's take on a cobb salad, on impossible wheat and conducted my own taste test. Mind you, warm bread is always a lure in and of itself, but I thought it held its own as far as bread goes.

Ironically, the best dish at Swich, is not even a sandwich, but the *Regionally Famous Sweet Potato Chips*. I doubt they're actually "famous", seeing as Swich has only been open for five days, but these salty sweet, paper thin slivers of fried sweet potato (cut in a meat slicer), are reason enough to make a trip to Swich. So is the *Edible Happiness*, a glorious mess of nutella, dark and white chocolate with evaporated milk, sealed between two thick slices of buttery brioche. There's no molecular gastronomy or even culinary wizardry at play in Swich's kitchen, but who could turn their nose up at oozing, melted chocolate at 2 AM?

Until we eat again,
Restaurant Girl

****Don't forget to subscribe for Restaurant Girl's Weekly Newsletter****

December 11, 2006 in [New Restaurants](#) | [Permalink](#)

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Overpriced, small portion sandwiches. Their salads are pretty decent tho. I really want to like this place but I just can't bring myself to give in.

A
P

Posted by: [Humor Blog](#) | [May 30, 2007 at 12:51 PM](#)

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EXHIBIT 6

Digress Ventures, LLC v. Christian Belce-Kennedy
Cancellation No: 92045951

Produced by: Digress Ventures, LLC

NoahBrier.com

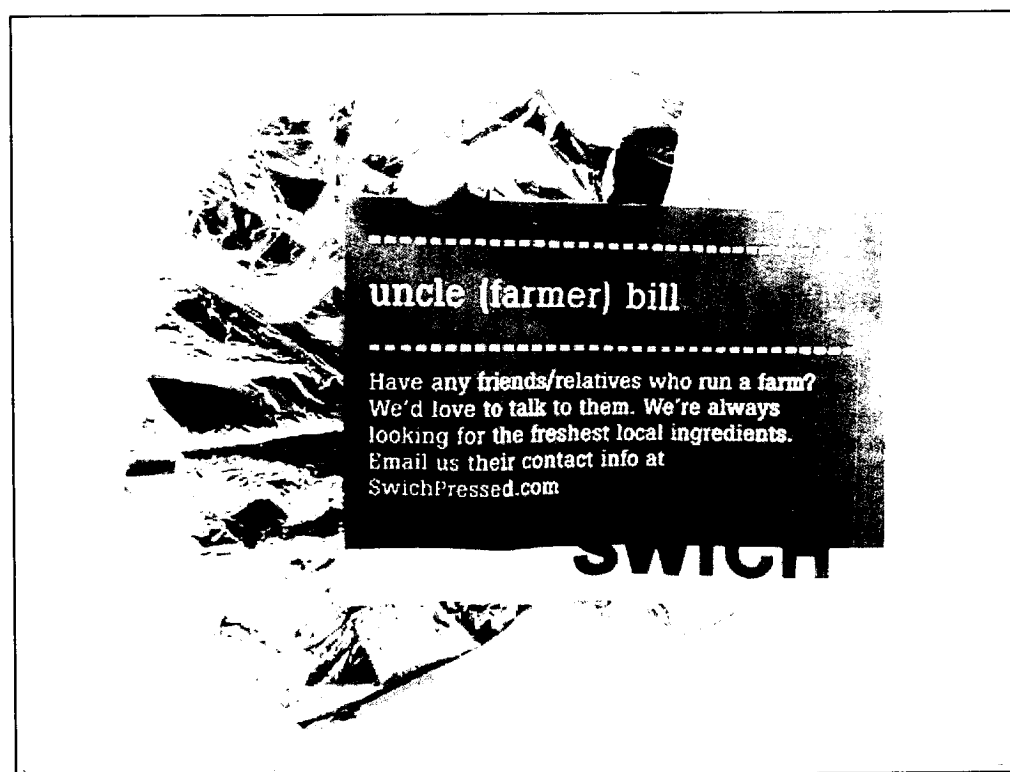
February 20, 2007

Another Kind of Networking

The story of a company that declared their interest to meet new and interesting people.

There's a new eatery in Chelsea called **Swich**. It's a pressed sandwich shop with an eye, and mind, towards design. From the logo to the televisions running **SWICH** TV, the place feels different (and the sandwiches taste delicious).

But this isn't about that, really. Instead it's about a sticker I found stuck on the wrapper of my sandwich when I ate there, which Michael was kind enough to photograph.



Have any friends/relatives who run a farm? We'd love to talk to them. We're always looking for the freshest local ingredients. Email us their contact info at SwichPressed.com

How fantastic is that? Here's a business trying to network the same way everyone else is: By putting themselves out there and declaring their interest. A few months ago I wrote about the importance of learning to be proactive in meeting people, if you want to talk to or meet other interesting people you need to let them and others know your desires. If you don't your stuck

love to meet others in their field who could offer them services. The thing is, they never signal that interest. I'm not entirely sure, but I imagine they'd worry about 'looking weak.' But that's ridiculous, wanting to meet new people is not a weakness, it's a strength. It's an understanding that you can't do it all alone and that there are others out there who can assist you in reaching your goals. Plus, at least to me, it signals an openness and interest in understanding more than just your own world. All the kinds of attributes I'd love the companies I do business with to possess.

Plus, by putting something like that sticker into the world it opens Swich up to all sorts of wonderful and serendipitous moments. Just the other day I was talking to Michael about my love for that sticker and he said he met someone who owned an organic cookie business and suggested they write Swich a note and see if there are opportunities. How cool is that? What are the odds that would ever happen with another company?

I think there are all sorts of opportunities with this kind of thinking. Obvious ones like recruiting could be made so much easier by utilizing your customers as connectors. Most companies say "we have openings, apply within," but what about asking people if they know anyone who might be interested? Sure it's a small change in wording, but it could make all the difference in the world. Then there's innovation: By signaling to your customers your desire to meet related people/companies you open yourself up to worlds you may not even know about. Sure Swich asked for farmers, but if I ever heard about a revolutionary new sandwich press I would be sure to suggest they chat.

There's got to be tons more possibilities for this, but I'm tired, so I'll leave it to you guys.

PS - Tomorrow is my first day at Naked, so blogging may be light this week as I get settled in (but don't forget about my birthday party coming up Friday).

Update (2/20/07): This quote from Desmond Tutu about the meaning of Ubuntu seemed quite appropriate to add: "My humanity is caught up, is inextricably bound up in yours. We belong in a bundle of life. I am a human because I belong. A person with ubuntu is open and available to others, affirming of others, does not feel threatened that others are able and good; for he or she belongs in a greater whole and is diminished when others are humiliated or diminished, when others are tortured or oppressed, or treated as if they were less than who they are." Obviously this is much larger, but the basic idea that we are open, available and not threatened by others sums up everything I was trying to say.


Update (2/20/07): Turns out Michael took a photo.

 Previous Entry:
Feeling Special

Next Entry: 
Sincerity and Cannibalism

Comments

The conversation continues . . .

Jump to
Comment Form 

Michael Surtees »

1

I wanted to mention something similar about switch but I'm glad I don't have to now b/c this really gets down to the philosophy of the company. The only thing that I would add about the inside of the store is their menu on the wall. They've used magnetic paint which allows them to place magnetic letters which is quite cool looking.

and if anyone curious about the "sticker", I took a photo of it at [Flickr](#).

February 20, 2007

Bonnie in Albuquerque »

•

I completely agree with you that people need to not be afraid to put themselves out there. Many business and institutions unfortunately do not do what this sandwich place does. It reminds of Ivan Illich's idea of learning webs that he wrote about in Deschooling Society. He felt that people needed to pair up with mentors or peers with simialr interests and or skill exchanges. he did not feel that schools taught "education". Skill exchanges are not something that is done too much anymore. I often try and facilitate this amongst my acquaintances and many jobs have come through this way. I used to work for a company that paid headhunters so much money to find people...what if they would have sent a group email or in the newsletter an announcement of a job and if anyone knows anyone...? I guess corporations and institutions operate under that ideology that they can do it alone or at least want to convey that message to their employees.
Ok, back to work...thanks for the break and thoughtful piece :)

February 20, 2007

Noah Brier »

•

Michael, glad I captured it and just so you know, I was going to mention the magnetic paint, can't remember why I didn't.

Bonnie, thanks for the excellent comment. I think you said it far more eloquently than I with "I guess corporations and institutions operate under that ideology that they can do it alone or at least want to convey that message to their employees." Also, do you have any links for further reading on learning webs?

Thanks very much to both of you.

February 20, 2007

Christian »

spambot-proof in their *print* communication.

February 21, 2007

// Alas, you have reached the bottom. Don't worry, you've got options. You could [subscribe to the site](#), check out the [archives](#), visit some of [my favorite blogs](#) or just scroll back up and [read this page again](#). It's better the second time, I swear. Oh, and for a little bit of cross promotion, check out [DaBearsBlog.com](#) for all your [Chicago Bears news](#). // © Noah Brier

EXHIBIT 7

Digress Ventures, LLC v. Christian Belce-Kennedy
Cancellation No: 92045951

Produced by: Digress Ventures, LLC

DesignNotes by Michael Surtees

- [About](#)
- [Books](#)
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another side of design

An interview with John Gargiulo, owner of Swich in NYC

March 12th, 2007 | Category: [Culture](#), [Design](#), [Food](#), [NYC](#), [Interview](#)



For the last couple of months I've been making it a habit to visit [Swich](#) (104 8th Ave between 15th + 16th, NYC) for lunch. There's a rotation of three swiches I really, really like. There's the Karate Chicken, Steak Monster and Thanksgiving Every Day that come highly recommended. Aside from the flavour of the food there's something else about the environment. Everything seemed considered and designed, more so than usual from what I've noticed when a business opens for the first time. One thing led to another and [Noah Brier](#) introduced me to John Gargiulo, the owner of Swich. Thinking that this would be the perfect opportunity to learn about Swich, John agreed to do an interview through email about all that is Swich.

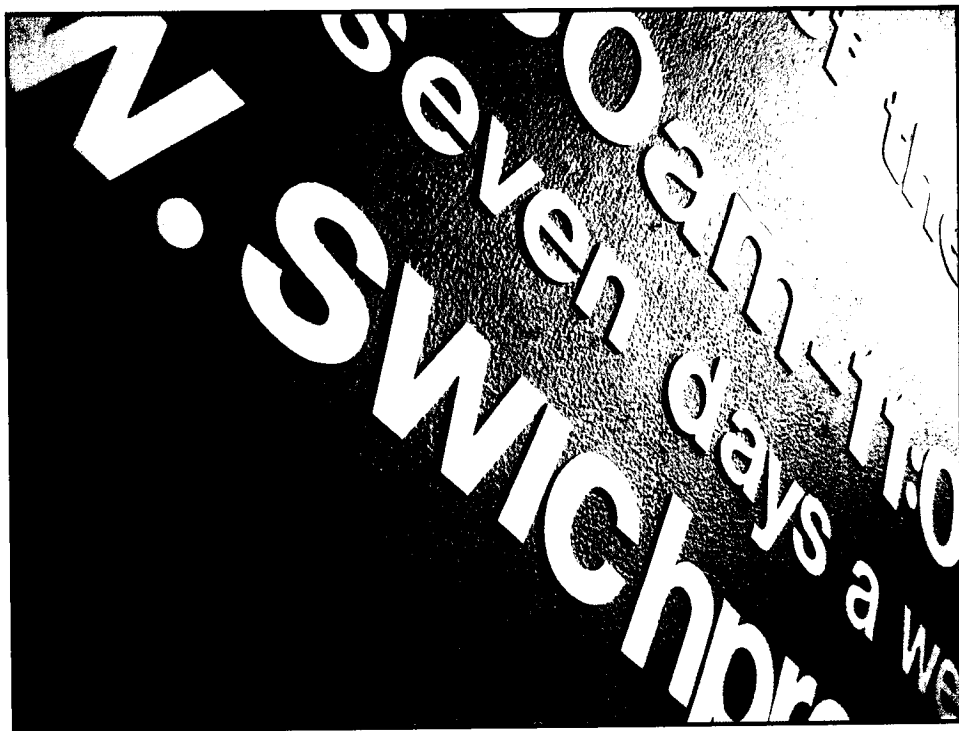
Michael Surtees: How did Swich come to be, what was your involvement? What were you doing before?

John Gargiulo: In my life before Swich I was a creative at an ad agency called Cliff Freeman and Partners. It had always been my dream agency and it was a thrill to get to work there. My Art Director partner at Cliff, Matt Woodhams-Roberts and I created and shot Print and TV spots for clients like Snapple, Sports Authority, and Quiznos. Matt is a great designer and has helped me with some design for Swich.

I always said on my 30th birthday if I hadn't yet taken a big risk in life and started a company or something big, I had to quit my job on that day and figure something out fast. I guess I got anxious because on my 26th birthday I walked into Cliff's office and retired from advertising. I developed a business plan, found an investor, and a year and a half later in December of last year, we opened our doors.

MS: When I walked into switch for the first time, it seemed relaxed yet the environment and experience seemed extremely considered. What is the philosophy of Swich and how did it come to be? Has the idea changed once the doors opened?

JG: The credit for the design of Swich has to go to the firm that came up with it- a happy group of people called The Apartment. I knew I wanted Swich to be a forward-thinking, future-leaning kind of place, but I also wanted it to feel comfortable and accessible. Homey-chic was sort of what I was thinking. I feel like The Apartment delivered that feel perfectly. It's a huge credit to them that your experience walking into Swich was precisely what all of us intended! A warm, happy, hip little place to get your sandwich fix.

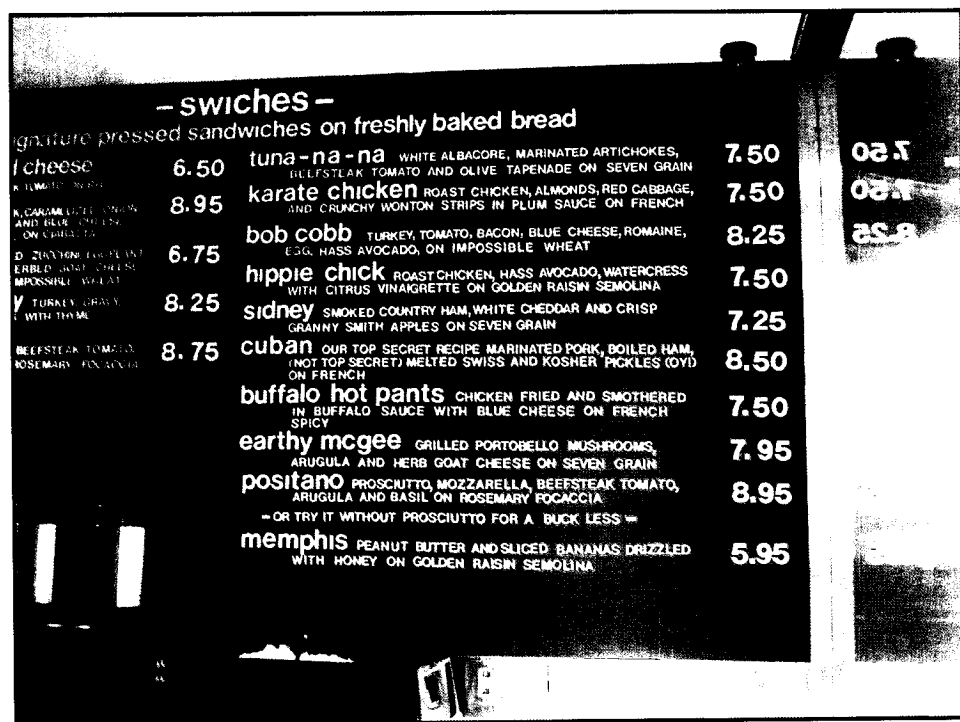


MS: Everything about Swich is designed yet it doesn't feel over the top. It doesn't scream of anyone's signature design style that I'm aware of. How did your concept for Swich turn into a reality. Were there designers involved? How did the collaboration work out?

JG: Looks like I should have been reading ahead on these questions! Yes as I've said the collaboration with the Apartment worked out great. When I was bidding the project I wanted to choose a design firm that I might have to pull back a little, rather than one I'd have to nudge along. What I love about Stefan and his team is that they have the guts to throw just about anything out there that they think could work. No matter how bizarre or impossible some of their ideas may seem at times, they are all original- which immediately puts them ahead of 95% of other creative firms, in my opinion. And many of their ideas are quite brilliant!

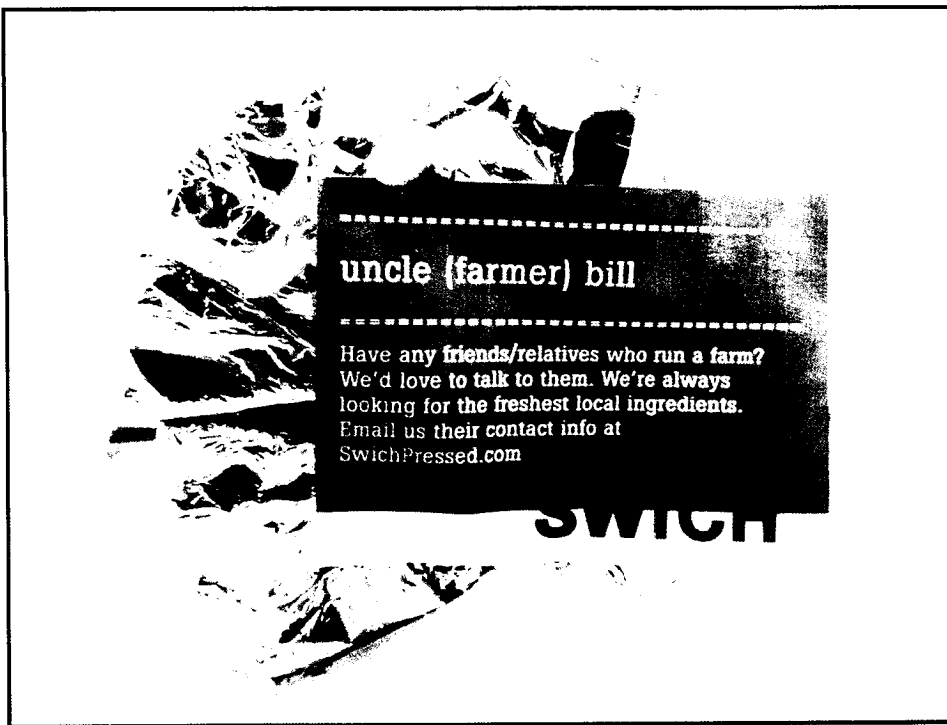
MS: What was the process like in choosing the company name? Was it fun, difficult? did you hire writers or let friends and family put in their ideas or did you know it was gonna be Swich from the get go?

JG: Oh my god there were so many names we went through. I asked all friends and family, as well as The Apartment to come up with a name, as well as working on it myself. There was "Stacked", and "Flaterie", and about 250 others. Oh! And for a while the name was "Made" which I sort of liked, but we found there was a chain of places in Iowa that the trademark lawyers said sounded too similar, so that got killed. I love the name Swich. It's clean, simple, catchy, and represents the product.



MS: I think people really enjoy the conversational tone of the experience. All of the sandwiches have funny yet no so obvious names. Where did the sandwich names come from?

JG: I wanted the personality of Swich to come through in almost every aspect of the experience. It may have been more direct if I had called the Swiches Buffalo Chicken and Steak Sandwich, for example, but I think it's easier to identify with a favorite sandwich if it's got a name like Buffalo Hot Pants or Steak Monster. It gives each Swich its own little personality.



MS: Along with the sandwich names you've taken the opportunity to have a talk with the person eating the food. There's writing on the stickers begging to be read, there's more writing on the paper that covers the trays. How has the feedback been on this? It almost seems like it could evolve into a two way conversation, have you considered any options to hear what others think of Swich?

JG: Having a talk with them is exactly how we think of it too. It's conversational. Every brand is like a person. Mercedes is the guy at the party in the Gucci suit striding up to every girl, Jamba Juice is the hyper-hypo California guy bouncing off the walls, and so on. We want Swich to be just a normal, stylish, totally down to earth guy that doesn't take himself too seriously. That's the tone that comes out in all our copy on those cups and trays and all of our branding communication. We absolutely love to get feedback and hear from our customers what they like about Swich and suggestions they have to make it better. On some of our cups we ask that people email us at whatithink@swichpressed.com to keep the conversation going. And I think at some point when we catch our breath, I will start a newsletter type of thing as well. I think listening to your customers is vitally important.



MS: There's a couple great peripheral elements that help make Swich unique such as all the green and white color, the magnetic wall near the front door that has the welcoming type, the large menu display, there's a plasma tv playing Swich tv, another plasma showing the music that is on, an interesting seating arrangement with a long table. How did all these things come to be?

JG: Well from the beginning I wanted to do SwichTV as well as the screen showing what song is playing. I think music is the most underrated part of the restaurant experience. It totally sets the mood for the place and taken a lot more seriously than just pumping in satellite radio or something. I choose all of the songs that play in Swich very carefully. For the menu display and the type on the walls the credit has to go to the Apartment, who also convinced me to paint the ceilings green by the way, which I'm glad we did.

MS: Why Swich tv? What have you learned by making videos? Any plans to extend what you've started?

JG: Making the bits for SwichTV was some of the most fun I had during the whole year and a half lead up to opening the first shop. I just wanted it to be weird, original stuff that you couldn't stop looking at. I noticed at other fast-casual chains there was never anything to look at while you waited for your food. People would stare at their feet, look for their sandwich, or if you were lucky you would have your iPod and just zone out to that for a while. Part of the Swich experience is entertaining people, and SwichTV I think adds to that. We are definitely making more videos in a couple of months. I want to get our employees involved, as we all think it would be extra funny to look up and the guy who's making your Swich is dancing on TV or doing some other strange stuff. We have a great, fun staff and they're totally into it.

MS: The food is great, almost every time I've been there I see people swapping bites with their friends. How did the menu develop and what type of process do you have in place to make the food even better? How often will you update the menu?

JG: The Swiches I just worked on over and over again for the year and a half leading up to the opening. I tested every Swich at least 15 different ways before choosing the best tasting, most complete version. My wife Sidney and family and friends helped a lot in that process. We just completed two months of further "real world" testing of every item in our kitchen, and we made a couple of tweaks here and there, and added the Earthy McGee deconstructed. But after so much work on getting the variety right in the menu and making sure the taste profile of every Swich is as perfect as it can be, I would like to keep the menu as static as possible. It also

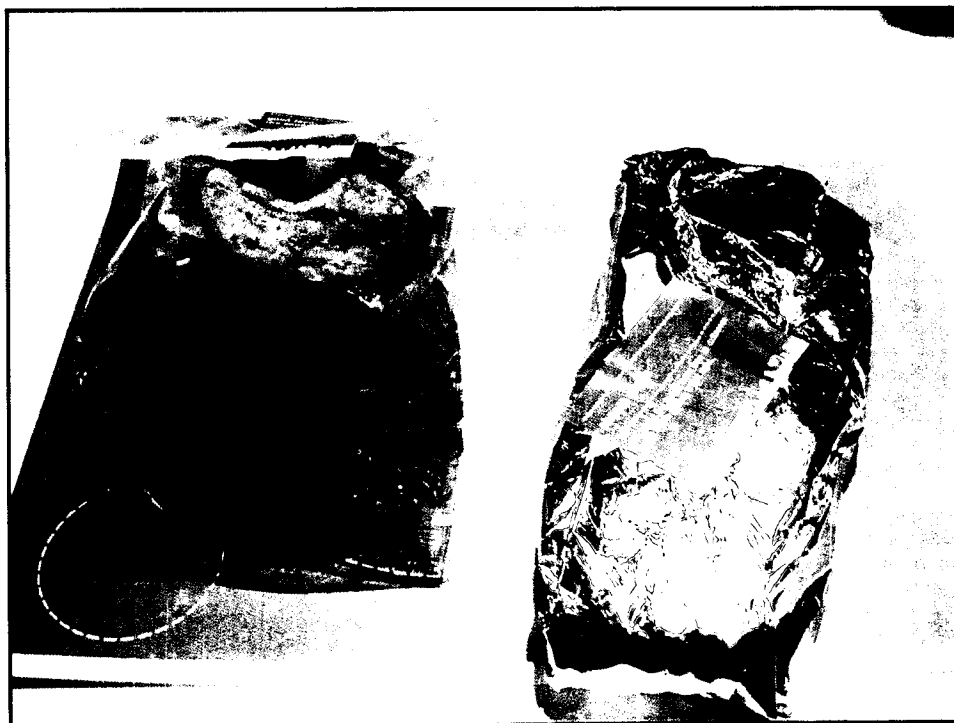
simplifies operations and helps us make sure we can get people their Swiches faster and more efficiently.

MS: What was the biggest learning experience that you've had since starting Swich?

JG: I've learned time and again during this process that the best thing you can do when starting a business is surround yourself with great people. I have the absolute smartest, nicest, most hardworking team I could have ever asked for. From my restaurant consultant Lisa Chodosh, who teaches a great class at the New School, to my real estate broker to my GM Steve Hardy, I couldn't be happier with my team. The goal was to build a core group of people who would be sort of the support team in growing Swich out as a national concept, and I definitely have those people behind me now and that makes all the difference in the world.

MS: When you're not eating at Swich, what is your favourite restaurant in New York right now.

JG: It's a tie between Pearl Oyster Bar and Blue Ribbon.



MS: How do you think design and marketing plays a role in Swich's success?

JG: I think that they play a big role. I think first of all as a restaurant concept, your food has to be good. That's a given. But I think design, maybe second to music (which permeates the entire room at all times) is the most underrated thing about a restaurant's success. In fact I think right now, and this is beginning to change, but design is one of the most underrated determinants of any retail business's success. Design for Swich helps us stand out, and it helps define who we are. The marketing, from the stickers on the cups to how our take-out bag looks sitting on someone's desk in their office 10 blocks away, are also ways in which we present ourselves to the public and have an opportunity to stand out.

MS: In a couple years where do you want to Swich to be? Are there other types of experiences that you would like to take on?

JG: Going forward I am working on making the Swich on 8th Avenue and 15th the best prototype it can be. When the time is right, which I think will be a matter of months, I will get back out there and start looking at locations to roll the concept out further. I can't tell you how many people from all over the city have written me asking for one in their neighborhood.. But right now I'm just trying to improve the model we have now little by

little every day. We just started delivery a couple of weeks ago and it's been going really well. Next up is catering, where we're going to differentiate ourselves as best we know how from the competition.

I'm having so much fun doing this every day, and I think going forward Swich will only get bigger and better!

MS: Thanks for taking the time to do this John. You know I'll be back. I'm looking forward to watching this grow into something better than it already is.

6 Comments so far

1. Adrian Lai March 12th, 2007 12:08 pm

Great interview Michael. Seems like the most innovative brands are always the ones doing business on the fringe, not the cookie cutter mega-chains.

Hope you do more of these!

2. Rik March 13th, 2007 6:43 am

Great story! Very inspiring etc. I can't wait to visit this place some time.

3. neal s March 13th, 2007 10:49 am

Great read, man.

ns

4. David Castillo March 14th, 2007 1:37 pm

I gotta go after a long day at the office!

- American Idol

5. nodecay March 14th, 2007 6:53 pm

I saw a strong foundation and vast creativity = success

6. Simen May 28th, 2007 4:52 pm

Wow, this interview really kept me reading, though I have never heard of the place before(I live kind of in the other side of the word).

Leave a reply

name (required)

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EXHIBIT 8

Digress Ventures, LLC v. Christian Belce-Kennedy
Cancellation No: 92045951

Produced by: Digress Ventures, LLC

SANDWICH OF THE WEEK

BY SHERRYL CONNELLY

Swich is an entirely cool pressed sandwich emporium that recently opened in Chelsea (104 Eighth Ave., at 15th St.). Definitely our kind of place. The sammies don't have names, they have titles, "Bob Cobb," "Steak Monster" and "Trojan Horse." We take issue with the last, though. There's no unpleasant surprise buried in this ground lamb delight, seasoned with mint and adorned with tzatziki. Forget being wary of Greeks bearing gifts. Bring this horse on.

SWICH TROJAN HORSE SANDWICH

Serves 4

- 1 tablespoon olive oil
- 1/4 cup onion, diced
- 16 ounces fresh ground lamb
- 1 teaspoon dried oregano
- 4 4x6-inch portions of rosemary focaccia
split horizontally
- 1 cup tzatziki
- 2 tablespoons fresh mint leaf, chopped
- 8 slices of ripe beefsteak tomato

PRÉPARATION

Heat olive oil in a medium-size sauté pan over high heat. Add the onion and a pinch of salt, and reduce heat slightly. Sauté the onion until translucent and tender. Add the ground lamb and dried oregano and cook until meat browns and is just cooked through. Season to taste with salt and pepper.

ASSEMBLY

Lay out the focaccia portions and spread the tzatziki evenly over the inside of each top and bottom slice. Spread the cooked lamb evenly over the bottom slices of each sandwich. Sprinkle the fresh mint over the lamb. Place two tomato slices evenly across each sandwich. Season the tomatoes with salt and pepper. Place the tops on each sandwich.

THE PRESS

Place the sandwich on a 400-degree sandwich press brushed with trans fat-free vegetable oil and close the top. After one minute, press down firmly for a few seconds. Repeat this firm pressing once a minute for 3 more minutes. Total cooking time is 4 minutes. Remove the sandwich and cut to your liking.



STANDS UP
TO SCRUTINY
Trojan Horse
Sandwich at
Swich

nydailynews.com

DAILY NEWS

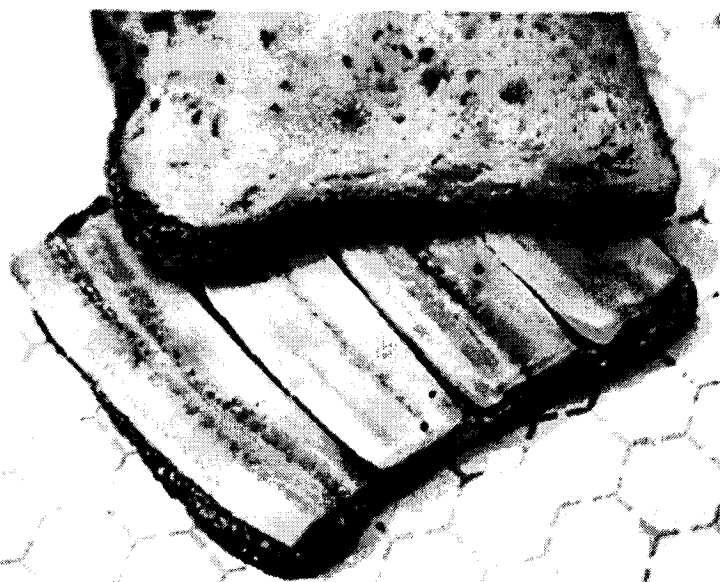
Photo: Anna

EXHIBIT 9

Digress Ventures, LLC v. Christian Belce-Kennedy
Cancellation No: 92045951

Produced by: Digress Ventures, LLC

Clean plate club



A mouthful The "Memphis" sandwich (\$5.95) at minimalist Chelsea panino parlor Swich gets its moniker from the grilled peanut-butter-and-banana concoction so beloved by Elvis. To create the Memphis, staffers layer creamy Skippy, bananas and a drizzle of honey between slices of a golden-raisin semolina loaf from Amy's Bread, then heat and toast the sandwich in a panini press for an ooey-goey and surprisingly complex-tasting snack. A gratis glass of milk helps wash it all down. 104 Eighth Ave between 15th and 16th Sts (212-488-4800, swichpressed.com).

PHOTOGRAPH BY JEFFREY M. HARRIS FOR THE NEW YORK TIMES MAGAZINE

EXHIBIT 10

Digress Ventures, LLC v. Christian Belce-Kennedy
Cancellation No: 92045951

Produced by: Digress Ventures, LLC

foods in focus

BY KRISTEN WOLFE BIELER

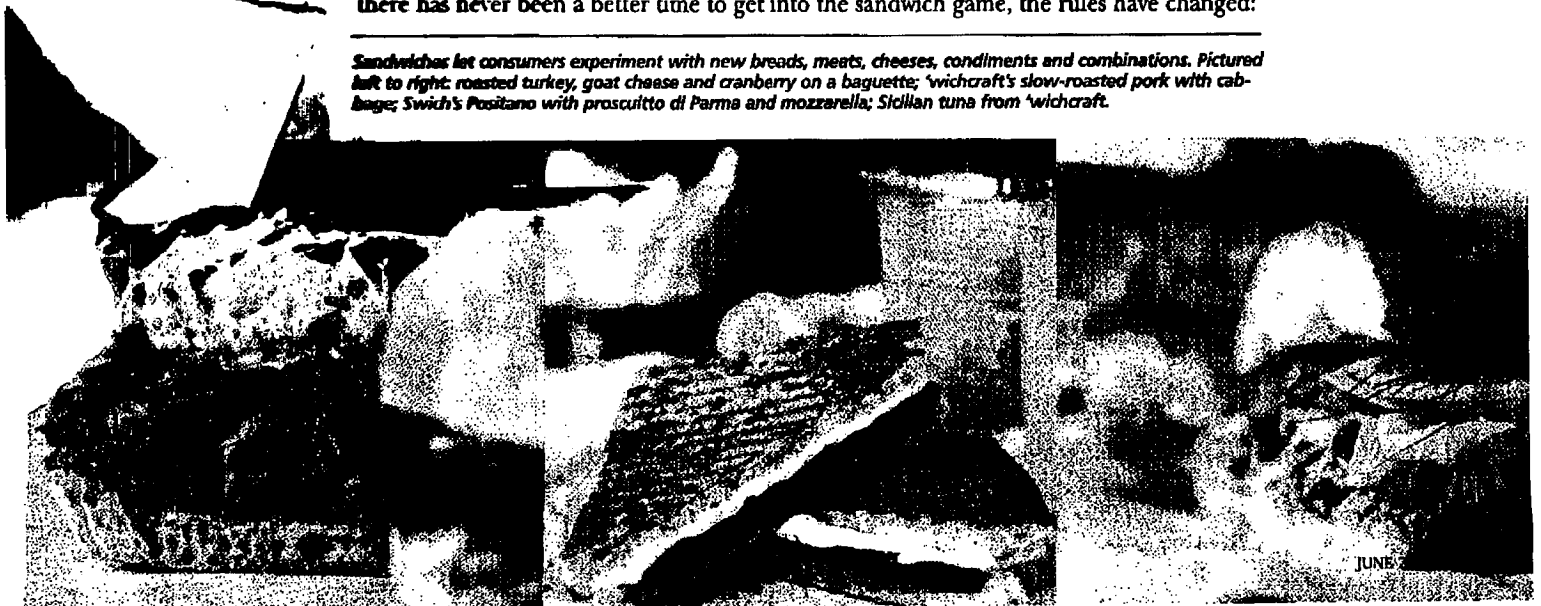
sandwich power

The American staple has been transformed with bold, fresh, often ethnic-inspired flavors.

DESPITE ITS BRITISH ORIGINS, THE SANDWICH HAS LONG BEEN AN AMERICAN FOOD ICON. It isn't surprising that we eat a lot of them (a billion a year, to be exact). But what does have industry trend-watchers marveling is the fact that, according to a recent study by NPD Group, "Eating Patterns in America," the sandwich is now the most popular main dish served at dinner in homes across the country.

Though its beginnings may be humble (the first version was reportedly created for the Earl of Sandwich who demanded a hand-held food that wouldn't interrupt his gambling), the sandwich today is anything but ordinary. It has become, in a word, specialty. But while there has never been a better time to get into the sandwich game, the rules have changed:

Sandwiches let consumers experiment with new breads, meats, cheeses, condiments and combinations. Pictured left to right: roasted turkey, goat cheese and cranberry on a baguette; 'wichcraft's slow-roasted pork with cabbage; Swish's Positano with prosciutto di Parma and mozzarella; Sicilian tuna from 'wichcraft.



required for each successful sandwich," says Latimer. "The hot and salty corned beef meeting the sweet Russian dressing held inside the doubly-crisped Jewish rye; the result is perfection." Balancing flavors is a study in precision, he adds, "Maintaining consistent quality of flavor, freshness and texture in all ingredients is the biggest challenge. One wrong note in the desired symphony of flavors can send a sandwich off the rails."

Poorly designed or random sandwich construction is another pitfall. At Zingerman's, each sandwich has a standard assembly pattern that usually starts with the cheese, which acts as a seal, keeping the center of the sandwich warm and the bread still crunchy. "Assembly error can seriously diminish or even ruin a sandwich," says Latimer. Employees train to master each technique at a reasonably rapid pace, as there is no way around the made-to-order mantra at Zingerman's where all bread and meat is sliced to order. "Too many delis allow corned beef and pastrami to sit in steamers bleeding moisture and flavor all day," notes Latimer.

The freshness factor gives sandwiches an edge over their fast-food counterparts. Henkes' research revealed that consumers perceive sandwiches as healthy because they are fresh (regardless of calories or fat content). Homemade ingredients are prized and a growing number of consumers are demanding organic, locally sourced items; freshness, more than ever before, is paramount.

"In terms of flavors, the freshness of the ingredients is the most important thing. A sandwich with chicken and avocado does not sound exciting, but if it is a really fresh Hass avocado and a roasted chicken just out of the oven, you have a beautiful pairing," says John Gargiulo, owner of Swich, an addition to New York's vibrant sandwich scene. Swich uses packaging to promote its local vendors, farms and dairies such as Amy's Bread, Lucky's tomatoes and Joe's Dairy. Each label has a conversational tone, as do sandwich names like Buffalo Hot Pants and Hippie Chick. "I want the personality of Swich to come across in every aspect of the experience," explains Gargiulo.

Sandwich Economics

If there is one trend growing in tandem with sandwich consumption, it's the amount people are willing to pay for them. "What has been surprising to me is that our higher-end, more expensive sandwiches have been our best sellers," notes Gargiulo. Swich's "Steak Monster"—a layering of sliced steak, blue cheese, steak sauce, caramelized onions and tomato—is Swich's number-one seller at \$8.95 (about \$2.50 more than the menu's least expensive sandwich, the Cheddar-Gruyere stuffed Double Decker Grilled Cheese). But prices need to stay in line, caution merchants. "Making certain ingredients in-house is a big cost savings even with the extra labor, while other things are easier and less expensive to purchase prepared from a good vendor," says Gargiulo. To balance costs, he recommends cutting corners on ingredients that might be less important: "In a sandwich with strong flavors like blue cheese or something spicy, it doesn't matter if you've got mesclun or romaine lettuce, so go with the romaine," he says. It's never okay to skimp on bread, however, which all operators agree is the



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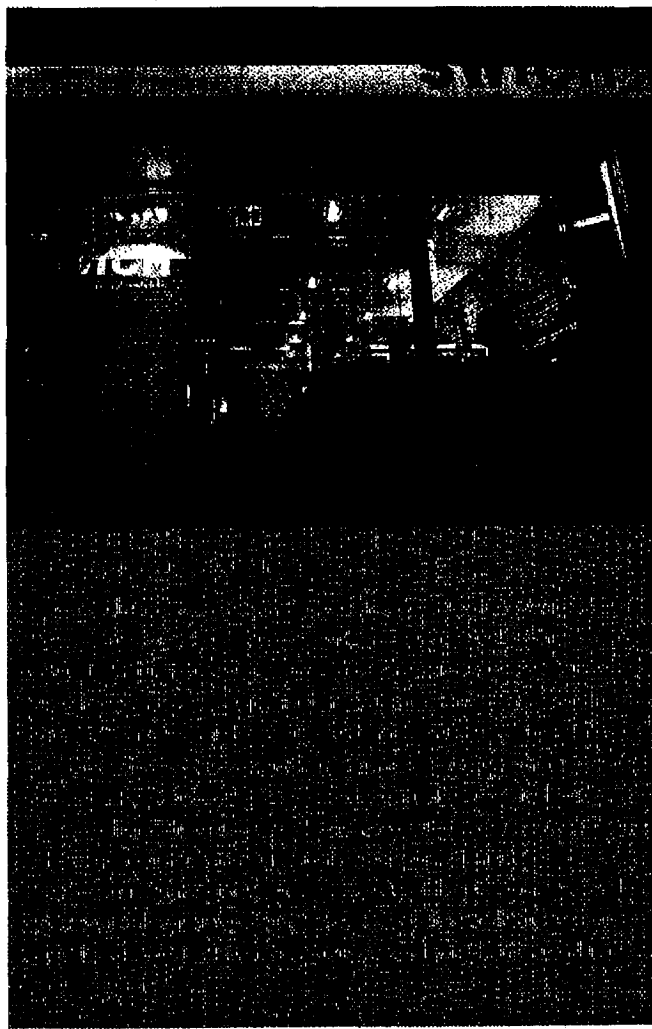
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foods in focus

most important element. "If your ingredients are good, but the bread is lousy, no one is going to care much for your sandwiches," points out Zurofsky.

At Zingerman's, Latimer has resigned himself to higher food costs than the average restaurant. While his sandwich prices are considered high for the region, profit margins are actually smaller. "That might sound like a not-very-sensible business model, and it does mean we have to work harder to achieve our profit levels," Latimer admits. "We just aren't willing to let quality slip, even on a few ingredients."

As sandwiches continue their dynamic evolution, a growing number of consumers agree with sandwich zealots like Latimer that a sandwich is, indeed, the perfect food. He concludes, "A sandwich is a simple concept, but it provides a million potential combinations, most of which haven't been thought of yet." ■



Kristen Wolfe Bieler is a contributor to GQ, City, Woman's Day and foodspring magazine.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the attached Petitioner's Opposition To Respondent's Motion For Relief From Judgment was served upon the attorney for Registrant, Donald L. Dennison, Esq., of Dennison, Schultz & MacDonald, 1727 King Street, Suite 105, Alexandria, Virginia 22314-2700, by first class mail on this date of July 20, 2007.

Geraldine MacLellan
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